ORIGINAL

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP EX PARTE OR LATE FILED

WASHINGTON OFFICE 3000 K STREET, NW, SUITE 300 WASHINGTON, DC 20007-5116 TELEPHONE (202) 424-7500 FACSIMILE (202) 424-7647

August 4, 1999

New York Office 919 Third Avenue New York, NY 10022-9998 Telephone (212) 758-9500 FACSIMILE (212) 758-9526

VIA COURIER

Magalie Roman Salas, Secretary Federal Communications Commission The Portals - TW-A325 445 Twelfth Street, S.W. Washington, DC 20554 RECEIVED

AUG 4 1990

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte: Petition for Reconsideration and/or Clarification of FCC's First

Report and Order (CC Docket No. 98-147)

Dear Ms. Salas:

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's rules, 47 C.F.R. Sections 1.1206(b)(1) and (2), we are providing this notice of an oral and written *ex parte* presentation in the above-captioned matter.

On August 3, 1999, myself; Colleen Dale, Senior Counsel of BroadSpan Communications, Inc.; and Kevin Minsky of this firm met with Julie Patterson and Staci Pies of the Policy Division of the FCC's Common Carrier Bureau, and Mark Stone, Marvin Gentry, and William Hill of the FCC's Accounting Safeguards Division of the FCC's Common Carrier Bureau and presented views concerning issues in the above-captioned proceeding. We presented views described in the attached outline of the presentation which was provided to Ms. Patterson, Ms. Pies, Mr. Stone, Mr. Gentry, and Mr. Hill. We also have attached hereto copies of documents provided to FCC staff.

Two (2) copies of the filing are enclosed. Please date stamp the enclosed extra copy of this filing and return it in the envelope enclosed herein. Should you have any questions regarding this matter, please do not hesitate to contact us.

Sincerely,

Patrick J. Donovan

Kevin D. Minsky

Counsel for BroadSpan Communications, Inc.

Enclosures

cc: Julie Patterson

Staci Pies Mark Stone Marvin Gentry William Hill No. of Copies rec'd O + 2

EX PARTE MEETING OF BROADSPAN COMMUNICATIONS, INC. D/B/A PRIMARY NETWORK COMMUNICATIONS REGARDING RECONSIDERATION AND/OR CLARIFICATION OF THE FCC'S FIRST REPORT AND ORDER IN CC DOCKET NO. 98-147²

August 3, 1999

Overview of the Company:

- BroadSpan Communications, Inc. ("BroadSpan") is a competitive local exchange carrier and international interexchange carrier currently operating in Missouri and Illinois. BroadSpan also holds international Section 214 authority from the FCC.
- BroadSpan provides resold and facilities-based local exchange telecommunications services, including <u>residential</u> and business local exchange telephone services, private branch exchange services, private line services, high speed data, frame relay service, xDSL services, custom calling features, blocking/unblocking services, directory listings, and operator services. In addition, BroadSpan provides resold intrastate and interstate interexchange services and international telecommunications services.
- BroadSpan intends to compete with Southwestern Bell Telephone Company ("SWBT") and Ameritech as a facilities-based carrier in multiple states and plans to collocate equipment including DSLAMs and other facilities necessary to provide advanced services.

Key Points:

- ILECs are disregarding the FCC's First Report and Order³ that established strengthened national collocation standards. ILECs are attempting to impose unreasonable costs and delays on CLECs who wish to utilize cageless physical collocation or shared collocation.
- Pursuant to the *First Report and Order*, BroadSpan has attempted to collocate equipment in a SWBT central office under a cageless physical collocation arrangement. However, SWBT has refused to permit cageless physical collocation arrangements until BroadSpan signs a separate collocation amendment to its existing interconnection agreement with SWBT that imposes unreasonable restrictions on CLECs' ability to obtain collocation.
 - Under SWBT's collocation amendment, it may take up to one hundred and eighty (180) days to complete construction for requests for caged, shared, or

² In re Deployment of Wireline Services Offering Advanced Telecommunications Services: Sprint Corporation's Petition for Partial Reconsideration and/or Clarification, CC Docket No. 98-147 (filed 6/1/99).

In re Deployment of Wireline Services Offering Advanced Telecommunications Services, CC Docket No. 98-147, First Report and Order (rel. March 31, 1999) ("First Report and Order")

cageless physical collocation (in situations where power does not exist). SWBT has only ninety (90) days under its existing interconnection agreement with BroadSpan to provide physical collocation space or SWBT must pay BroadSpan liquidated damages.

- SWBT has delayed CLECs' efforts to physically collocate DSLAMs and other permitted equipment, even if such equipment has received a NEBS Level 1 safety certificate, by attempting to impose unnecessary equipment certification procedures.
- In addition, SWBT has requested CLECs to pay the same up-front space preparation charges for collocation regardless of whether the collocator is seeking caged or cageless physical collocation.
 - BroadSpan believes it is unfair for CLECs to pay the same up-front space preparation charges for cageless physical collocation as caged physical collocation. SWBT should take into the account the reduced costs it incurs in preparing cageless physical collocation space.

BroadSpan's Desired Actions from the FCC:

On reconsideration, the FCC should adopt the following additional rule changes:

- Prescribe the collocation provisions that ILECs must include in their interconnection agreements
 in order to comply with the FCC's First Report and Order, or, establish more detailed guidelines
 for the ILECs' revision of the collocation arrangements in their interconnection agreements.
- Adopt specific minimum collocation provisioning intervals for the ILECs. For example, the FCC should adopt a minimum standard interval of no more than ninety (90) days in which a requesting carrier must be allowed to physically collocate at a particular ILEC's premises, so long as previous conditioned or prepared space is available.
- Specify in the rules that ILECs must allow CLECs to collocate DSLAMs and other equipment
 used for interconnection or access to unbundled network elements if such equipment has
 received a NEBS Level 1 safety certificate.
- Prohibit ILECs from attempting to nullify CLECs' contractual rights under existing interconnection agreements through the adoption of collocation amendments e.g., ILECs should not be able to delete provisions in existing interconnection agreements that provide CLECs with liquidated damages due to the ILECs' failure to meet specific performance standards.
- Require the ILECs to offer reduced up-front space preparation charges for cageless and shared physical collocation versus caged physical collocation.

APPENDIX COLLOCATION - MO
PAGE 1 OF 30
SWBTCLEC
070799

COLLOCATION AGREEMENT

BETWEEN

SOUTHWESTERN BELL TELEPHONE COMPANY AND

TABLE OF CONTENTS

1.0	DEFINITIONS	3
2.0	PURPOSE AND SCOPE OF AGREEMENT	4
3.0	GENERAL OFFERINGS	
4.0	SPACE AVAILABILITY	
5.0	DENIAL OF COLLOCATION EQUIPMENT	
6.0	DEDICATED COLLOCATION SPACE CHARGES	14
7.0	USE OF DEDICATED COLLOCATION SPACE	15
8.0	RESPONSIBILITIES OF COLLOCATOR	18
9.0	VIRTUAL COLLOCATION	19
10.0	CASUALTY LOSS	19
11.0	RE-ENTRY	20
12.0	LIMITATION OF LIABILITY	20
13.0	INDEMNIFICATION OF SWBT	22
14.0	LIMITATION OF ACTIONS; DISPUTE RESOLUTION	22
15.0	NOTICES	23
16.0	COMPLIANCE WITH LAWS	24
17.0	OSHA STATEMENT	24
18.0	INSURANCE	24
19.0	SWBT's RIGHT OF ACCESS	26
20.0	MISCELLANEOUS	27
21.0	APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS	29

COLLOCATION AGREEMENT

THIS COLLOCATION AGREEMENT (*	"Agreement") is made this	day of
, 1999 by and between SOUTHWESTERN	BELL TELEPHONE COM	PANY, a Missouri
corporation ("SWBT"), and and a a grant and a grant a grant and a grant a gran	corporation ("Collocator"	").

WITNESSETH

WHEREAS, SWBT is an incumbent local exchange carrier having a statutory duty to provide for "physical collocation" of "equipment necessary for interconnection or access to unbundled network elements," in accordance with 47 U.S.C. 251(c)(6);

WHEREAS, Collocator wishes to physically collocate certain of its equipment within an Eligible Structure (as defined herein) and connect with SWBT;

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SWBT and Collocator (the "Parties") agree as follows:

1.0 **DEFINITIONS**

- 1.1 "Act" means the Communications Act of 1934 [47 U.S.C. 153(R)], as amended by the Telecommunications Act of 1996.
- 1.2 "Adjacent Space Collocation" is physical collocation at a Collocator-provided controlled environmental vault or similar structure to the extent technically feasible on SWBT premises adjacent to an Eligible Structure.
- 1.3 "Caged Physical Collocation" is an individual enclosure (not including a top) for Collocator to install its telecommunications equipment within Collocator's dedicated collocation space.
- 1.4 "Cageless Physical Collocation" is a collocation arrangement that does not require the construction of a cage or similar structure or the creation of a separate entrance to the collocation space.
- 1.5 "Dedicated Collocation Space" means the space dedicated for the Collocator's physical collocation arrangement located within a SWBT Eligible Structure.
- 1.6 "Eligible Structure" means (1) a SWBT central office, serving wire center or tandem office, or (2) a building or similar structure owned or leased by SWBT that houses its network facilities, or (3) a structure that houses SWBT transmission facility.

1.7 "Shared Physical Collocation Cage" is a caged dedicated collocation space that is shared by two or more collocators within a SWBT Eligible Structure.

2.0 PURPOSE AND SCOPE OF AGREEMENT

- 2.1 The Parties agree that this Agreement does not constitute, and shall not be asserted to constitute, an admission or waiver or precedent with any State commission, the Federal Communications Commission, any other regulatory body, any State or Federal Court, or in any other forum that SWBT has agreed or acquiesced that any piece of Collocator equipment or facility is "equipment necessary for interconnection or access to unbundled network elements" under 47 U.S.C. 251(c)(6).
- 2.2 Nothing in this agreement requires SWBT to permit collocation of equipment used solely for switching (e.g. 5ESS, DMS 100, etc.) or solely to provide enhanced services; provided, however, that SWBT may not place any limitations on ability of Collocator to use all features, functions, and capabilities of collocated equipment including switching and routing features and functions and enhanced services functionalities if such equipment is necessary for access to UNEs or for interconnection with SWBT's network. SWBT may require Collocator's employees to undergo the same level of security training, or its equivalent, that SWBT's own employees, or third party contractors providing similar functions must undergo; provided that SWBT may not require Collocator's employees to receive such training from SWBT itself, but must provide information to Collocator on the specific type of training required so Collocator's employees can conduct their own training.
- 2.3 Submission to State Commission The effectiveness of this Agreement is conditioned upon the unqualified approval of this Agreement, whether as a result of an approval process or by operation of law, under 47 U.S.C. 252(a)(1). After execution of this Agreement, the parties shall submit it to the State commission for the State in which Collocator desires physical collocation as thereby required for approval, and shall defend the Agreement and support any reasonable effort to have this Agreement so approved, including the supplying of witnesses and testimony if a hearing is to be held.
- 2.4 Failure to Receive Approval In the event that this Agreement does not receive such unqualified approval, this Agreement shall be void upon written notice of either party to the other after such regulatory action becomes final and unappealable. Thereafter Collocator may request to begin negotiations again under 47 U.S.C. 251. Alternatively, the parties may both agree to modify this Agreement to receive such approval, but neither shall be required to agree to any modification. Any agreement to modify shall not waive the right of either party to pursue any appeal of the ruling made by any reviewing regulatory commission.
- 2.5 **Preparation Prior to Regulatory Approval** Upon the written request of Collocator, SWBT shall consider an application for collocation space submitted prior to receiving the approval required by Section 2.3 hereof. Upon such an election, this Agreement shall become effective but only insofar as to be applicable to the consideration of an application for collocation

space. In the event that the Agreement does not become fully effective as contemplated by this Section, Collocator shall not be entitled to any refund or return of any such payments beyond any portion of the charges paid but not attributable to costs incurred by SWBT. To the extent that SWBT has incurred preparation costs not included within any payment made by Collocator, Collocator shall pay those costs within thirty (30) days of notice by SWBT.

2.6 Price quote intervals are as follows and will run concurrent with the ten (10) day notification interval for availability of space:

Number of	
Applications by One Collocator	Quotation Interval
1 - 5	35 Business Days
6 - 10	40 Business Days
11 - 15	45 Business Days

Should Collocator submit six (6) or more applications within five (5) business days, the quotation interval will be increased by five (5) business days for every five (5) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and will be subject to the time intervals set forth above.

Collocator may obtain a shorter interval for the return of price quotes than that set forth above by scheduling a meeting with SWBT at least twenty (20) business days prior to submission of the first application to discuss, coordinate and prioritize Collocator applications. Collocator has sixty-five (65) business days from receipt of the quotation to accept the quotation. The quotation expires after sixty-five (65) business days. After sixty-five (65) business days, a new application, application fee, and engineering design charge are required.

- 2.7 SWBT will complete construction of all Active Central Office Switchroom Space requests for caged, shared, and cageless collocation in 90 days from the receipt of Collocator's acceptance of the quotation.
- Unless otherwise mutually agreed to by the Parties in writing, where power does not exist or in Other Central Office Space, SWBT will complete construction of requests for caged, shared, or cageless collocation within 180 days from receipt of Collocator's acceptance of the quotation.
- 2.9 SWBT will provide Collocator reduced intervals for augments to interconnection and/or power arrangements into its existing physical collocation space. Collocator must submit to SWBT's Interexchange Carrier Service Center (ICSC) a completed application for a Subsequent Job. For the reduced build-out interval to apply, this application must include an up-front payment of the non-recurring Application Fee. In addition, the application must include an accurate front equipment view (a.k.a. rack elevation drawing) specifying bay(s) for Collocator's point of termination. Unless mutually agreed to, reduced intervals for augments to interconnection and/or power arrangements, where sufficient power infrastructure is available,

shall be provided within (60) days after acceptance of the quote. Other augments requiring additional bay spaces, SWBT bays, SWBT cable racks, cage expansions and/or power requests that exceed existing power infrastructure, within Active Central Office space will have a construction interval mutually agreed upon between Collocator and SWBT, not to exceed 90 days.

2.10 Collocator must place operational telecommunications equipment in the Dedicated Collocation Space and connect with SWBT's network within sixty (60) days after receipt of such notice; provided, however, such 60-day period shall not begin until regulatory approval is obtained. If Collocator fails to do so, this Agreement is terminated except that Collocator shall be liable in an amount equal to the unpaid balance of the charges due. For purposes of this Section, Collocator's telecommunications equipment is considered to be operational and interconnected when connected to SWBT's network for the purpose of providing service.

3.0 GENERAL OFFERINGS

- 3.1 Except where physical collocation is not practical for technical reasons or because of space limitations, SWBT will provide physical collocation to Collocator for the purpose of interconnecting with SWBT's network or for obtaining access to SWBT's unbundled network elements pursuant to 47 U.S.C. 251(c). Physical collocation shall be provided on a non-discriminatory basis, on a "first-come, first served" basis, and otherwise in accordance with the requirements of the Act (including 47 U.S.C. 251(c)(6), and applicable FCC rules thereunder. SWBT's physical collocation offering includes the following:
 - 3.1.1 Caged Physical Collocation Collocator may apply for Caged Physical Collocation in increments of 50 square feet. SWBT will charge Collocator for the space it uses, the time and materials required to construct the "cage," and any other charges directly attributable to that carrier such as dedicated conduit to and/or within the cage. Each Caged Physical Collocation request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in Collocator's assigned bays and the location will be determined by Collocator. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of Collocator's cost. Any available physical collocation option will require and include a minimum of one collocation interconnection power panel (CIPP).

SWBT will allow Collocator to contract with other prospective collocators to share the caged Dedicated Collocation Space in a sublease type arrangement, provided the subleasing co-collocator's equipment is also used for interconnection with SWBT's network and/or access to SWBT's unbundled network elements. In a sublease arrangement, the initial collocator(s) shall not charge a subleasing collocator more than the prorated share (based on square footage used exclusively or in common) of SWBT's monthly rates and nonrecurring charges to the initial collocator. Each collocator in a sublease arrangement may order SWBT unbundled network elements to and provision

service from the dedicated collocation space regardless of which collocator was the original collocator.

3.1.2 Shared Physical Collocation Cage - A shared collocation cage is a caged collocation space shared by two or more new entrant Collocators pursuant to terms and conditions agreed to by the Collocators. Collocator may apply for Shared Physical Collocation Cage in increments of 50 square feet. In those instances where SWBT receives applications simultaneously from multiple collocators who desire construction of a cage to be shared, SWBT may not increase the cost of site preparation or nonrecurring charges above the cost of provisioning such a cage of similar dimensions and material to a single collocating party. In addition, SWBT must prorate the charge for site conditioning and preparation undertaken by SWBT to construct the shared collocation cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to each party sharing the space based on the percentage of the total space of the shared cage utilized by the parties. The total of the collocators' combined floor space requirements must equal the total square footage of the shared cage. Collocator's allocation of the total charge for site preparation will be based on the percentage of the total space utilized by Collocator. If Collocator submits a unique request, then only Collocator will be charged for those costs directly attributable to Collocator.

If two or more requesting carriers have interconnection agreements with SWBT, SWBT will permit each requesting carrier to order unbundled network elements and provision service from shared collocation space, regardless of which requesting carrier was the original collocator. Each Collocator request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in one of Collocator's assigned bays and the location shall be determined by Collocator. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of Collocator's cost. Any available physical collocation option will require and include a minimum of one collocation interconnection power panel (CIPP).

3.1.3 Cageless Physical Collocation - Subject to technical feasibility and security requirements, SWBT will allow Collocator to collocate in any unused space (space that is vacant and does not contain SWBT equipment, is not reserved for growth, is not used for administrative or other functions, and is not needed for access to, egress from, or work within occupied or reserved space) in SWBT's Eligible Structure (central office), without requiring the construction of a cage or similar enclosure around Collocator's dedicated space, and without requiring the creation of a separate entrance to Collocator's dedicated space. SWBT will designate the space to be used for cageless collocation. SWBT may require Collocator to use a central entrance to the building in which the cageless collocation is provided, but may not require construction of a new entrance for Collocator's or other collocating carriers' use, and once inside the building, SWBT must permit Collocator to have direct access to Collocator's equipment.

SWBT may not require Collocator to use an intermediate interconnection arrangement (i.e., a POT bay) that simply increases collocation costs without a concomitant benefit to incumbents, in lieu of direct connection to SWBT's network if technically feasible. In addition, SWBT may not require Collocator to collocate in a room or isolated space separate from SWBT's own equipment, that only serves to increase the cost of collocation and decrease the amount of available collocation space. SWBT may take reasonable steps to protect its own equipment, such as, but not limited to, enclosing SWBT equipment in its own cage, and other reasonable security measures as described herein. SWBT may utilize reasonable segregation requirements that do not impose unnecessary additional cost on Collocator.

SWBT must make cageless collocation space available in single-bay increments, meaning that Collocator can purchase space in increments small enough to collocate a single relay rack, or bay, of equipment (10 square feet for standard equipment bays and 18 square feet for cabinetized equipment bays).

Each Collocator request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in one of Collocator's assigned bays and the location shall be determined by Collocator. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of Collocator's cost. Any available physical collocation option will require and include a minimum of one Collocation Interconnection Power Panel (CIPP).

3.1.4 Adjacent Space Collocation – When space is legitimately exhausted inside a SWBT Eligible Structure, SWBT will permit Collocator to physically collocate in adjacent controlled environmental vaults or similar structures (e.g. used by SWBT to house telecommunications equipment) to the extent technically feasible. SWBT will permit Collocator to construct or otherwise procure such adjacent structure, subject to reasonable safety and maintenance requirements, zoning and other state and local regulations, and SWBT's right to exercise reasonable control over the design, construction, and placement of such adjacent structures. Collocator will be responsible for securing the required licenses and permits, the required site preparations, and retain responsibility for building and site maintenance associated with placing the adjacent structure. SWBT will be allowed to reserve reasonable amounts of space adjacent to its premises needed to expand its premises to meet building growth requirements. SWBT reserves the right to assign the location of the designated space where the adjacent structure will be placed.

SWBT will provide a standard offering of 100 AMPS of AC power to the adjacent structure when Central Office Switchboard AC capacity exists and 200 AMPS of DC power to the adjacent structure up to 200 cable feet from the Central Office power source. When power requirements are outside of these office capacity and distance limitations, SWBT will treat the requirements as a unique request and coordinate a mutually agreeable solution for provisioning power with Collocator. At its option, Collocator may

APPENDIX COLLOCATION - MO
PAGE 9 OF 30
SWBTCLEC
070799

choose to provide its own AC and DC power to the adjacent structure. SWBT will

provide power and physical collocation services and facilities to such adjacent structures, subject to the same nondiscrimination requirements as other collocation arrangements in this Agreement.

Any temporary adjacent structure placed by Collocator should be removed at Collocator's expense once interior space is available in the Eligible Structure. Appropriate charges applicable for collocation within the Eligible Structure will apply. SWBT will work cooperatively with Collocator to relocate facilities into the Eligible Structure.

- 3.1.5 All other requests for physical collocation will be analyzed on a case-by-case basis. When Collocator requests a particular collocation arrangement, Collocator is entitled to a rebuttable presumption that such arrangement is technically feasible if any LEC with a substantially similar network has deployed such collocation arrangement in any incumbent LEC premises.
- 3.2 Interconnection Arrangement SWBT shall provide, at the request of Collocator, the connection between Collocator's optional POT frame or equipment bay and the SWBT network. The connection cannot be provided by Collocator. Collocator will not be permitted access to the SWBT Main Distribution Frame or Intermediate Distribution Frame. If regeneration equipment is required, for any reason, it will be at Collocator's expense. Interconnection Arrangements options are as follows: DS1 Arrangement, DS3 Arrangement, Copper Cable Arrangement, Shielded Cable Arrangement, and Fiber Arrangement.
- 3.3 SWBT shall provide, at the request of Collocator, the connection between the equipment in the collocated spaces of two or more telecommunications carriers. Available connections include copper cable, coaxial cable, and fiber optic cable.
- 3.4 Within a contiguous area within the Eligible Structure, SWBT shall permit Collocator to connect its equipment with that of another collocated telecommunications carriers within the same Eligible Structure provided that the collocated equipment is also used for interconnection with SWBT or for access to SWBT's unbundled network elements. Collocator will not be permitted to place cable over SWBT's switches or other critical equipment. SWBT will designate the space to be used for such facilities. SWBT shall permit Collocator to construct such facilities using copper or optical fiber facilities subject to the same reasonable safety requirements that SWBT imposes on its own equipment and facilities.

If the collocators are not located on the same floor and cannot physically pull the cable themselves through the SWBT provided structure(s), SWBT will perform the necessary construction and perform the cable pull on a time and materials basis. At no time will Collocator be allowed access to any portion of the central office other than the collocation area — except for reasonable access to restrooms and parking lots where available. SWBT will not make the physical connection with Collocator's equipment, SWBT will not accept any liability for the cable or the connections and SWBT will not maintain any records concerning these connections.

- SWBT shall permit Collocator to place its own connecting transmission facilities within SWBT's Eligible Structure in the physical collocation space, subject to reasonable safety limitations. Collocator shall not have access to SWBT's Main Distribution Frame and/or Intermediate Distribution Frame. As provided herein, SWBT may require reasonable security arrangements to protect its equipment and ensure network reliability. Except as provided below, SWBT may only impose security arrangements that are as stringent as the security arrangements that SWBT maintains at its own premises for its own employees or authorized contractors. SWBT must allow Collocator to access its installed physical collocation equipment 24 hours a day, seven days a week, in central offices without requiring either a security escort of any kind or delaying a Collocator's employees' entry into SWBT's central office. SWBT interprets these requirements to apply to central offices only, not remote terminals. Reasonable security measures that SWBT may adopt include, but are not limited to, the following:
 - (1) Installing security cameras or other monitoring systems; or
 - (2) Requiring Collocator personnel to use badges with computerized tracking systems; or
 - (3) Requiring Collocator employees to undergo the same level of security training, or its equivalent, that SWBT's own employees, or third party contractors providing similar functions, must undergo; provided, however, that SWBT may not require Collocator employees to receive such training from SWBT itself, but must provide information to Collocator on the specific type of training required so Collocator's employees can conduct their own training.
 - (4) SWBT may take reasonable steps to protect its own equipment, such as enclosing the equipment in a cage.
- 3.6 Relocation In the event SWBT determines it necessary for Dedicated Collocation Space to be moved within the Eligible Structure in which the Dedicated Collocation Space is located or to another Eligible Structure, Collocator is required to do so. If such relocation arises from circumstances beyond the reasonable control of SWBT, including condemnation or government order or regulation that makes the continued occupancy of the dedicated collocation space or eligible structure uneconomical in SWBT's sole judgment, Collocator shall be responsible for the cost of preparing the new dedicated collocation space at the new location. Otherwise SWBT shall be responsible for any such preparation costs.

In the event that Collocator requests that the Dedicated Collocation Space be moved within the SWBT Eligible Structure or to another Eligible Structure, SWBT shall permit Collocator to relocate the Dedicated Collocation Space, subject to the availability of space and associated requirements. Collocator shall be responsible for all charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Dedicated Collocation Space and the new wire center as applicable.

4.0 SPACE AVAILABILITY

- 4.1 At the request of Collocator, SWBT will provide space for physical collocation as described above. SWBT is not required to provide physical collocation at a particular Eligible Structure if it demonstrates that physical collocation is not practical for technical reasons or because of space limitations. In such cases and with the qualifications set forth above, SWBT will provide Adjacent Structure Collocation as described above or Virtual Collocation, except at points where SWBT proves that Adjacent Structure Collocation and/or Virtual Collocation is not technically feasible. If Adjacent Structure Collocation or Virtual Collocation is not technically feasible, SWBT will make a good faith effort to provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.
- 4.2 The determination whether there is sufficient space to accommodate physical collocation at a particular Eligible Structure will be made initially by SWBT. SWBT will notify Collocator within ten (10) days of submission of a completed Application for physical collocation by Collocator as to whether its request for space is been granted or denied due to a lack of space. When space for physical collocation in a particular eligible structure is not available, SWBT shall place Collocator on the waiting list for collocation in a particular Eligible Structure according to the date Collocator submitted its application for physical collocation in that Eligible Structure.
- 4.3 If SWBT contends space for physical collocation is not available in premises, SWBT must also allow Collocator to tour the entire central office or other eligible structure in question, not just the area in which space was denied, without charge, within ten days of the receipt of SWBT's denial of space. If Collocator disputes SWBT's determination, Collocator can elect a review to be made by a mutually agreed to third party engineer, under a non-disclosure agreement. All costs of the third-party inspection, including but not limited to all payments to the third-party engineer in connection with the inspection, shall be shared equally by SWBT and Collocator. The engineer shall take into consideration SWBT's planned use for the eligible structure under review.
- 4.4 Within ten (10) days of Collocator submitting a request to SWBT for physical collocation, if SWBT finds that it must deny the request, SWBT must file its response, under seal, with the Commission. The response includes the following information:
 - 1. Central Office Common Language Identifier, where applicable;
 - 2. The identity of the requesting Collocator, including amount of space sought by Collocator;
 - 3. Total amount of space at the premises;
 - 4. Floor plans including measurements of the SWBT's premises, showing:

Notaring naving night for renow

- (a) Space housing SWBT network equipment or administrative offices;
- (b) Space housing unused obsolete equipment, if any;
- (c) Space which does not currently house SWBT equipment or administrative offices but is reserved by SWBT for future use;
- (d) Space occupied by collocators for the purpose of network interconnection or access to unbundled network elements;
- (e) Space, if any, occupied by third parties for other purposes;
- (f) Remaining space, if any.
- 5. Identification of turnaround space for the switch or other equipment, if any;
- 6. Central office rearrangement/expansion plans, if any and
- 7. Description of other plans, if any, that may relieve space exhaustion.
- 4.5 SWBT will maintain a publicly available document, posted for viewing on SWBT's publicly available Internet site, indicating all premises that are full, and will update such a document within ten days of the date at which a premises runs out of physical collocation space.
- 4.6 Upon request, SWBT must submit to the requesting carrier within ten days of the submission of the request a report indicating the available collocation space in a particular SWBT premises. Collocator may request a report by submitting a completed Collocation Space Availability Report Request with the required fees for the requested report(s). This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that SWBT is taking to make additional space available for collocation. For more than 20 requests at once from Collocator regarding offices where there is no current collocation or collocation forecasted, SWBT will provide the additional information on a scheduled basis of ten additional offices every ten days.
- 4.7 In any Central Office in which all options for physical collocation offered by SWBT have been exhausted, SWBT shall not be permitted to provide additional space in that Central Office for any of its affiliates.
- 4.8 SWBT is not required to lease or construct additional space to provide for physical collocation when existing space has been exhausted. Moreover, SWBT is not required to, nor shall this Appendix create any obligation or expectation, to relinquish used, or forecasted space to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy any request for additional space or the placement of Collocator equipment or

facilities, whether through an initial request for physical collocation or a subsequent request for more space in an Eligible Structure. SWBT and Collocator shall not unreasonably warehouse forecasted space.

- 4.9 To the extent possible, SWBT will make contiguous space available to Collocator if Collocator seeks to expand an existing physical collocation arrangement and such request meets SWBT's non-discriminatory practices regarding efficient space utilization.
- 4.10 When planning renovations of existing Eligible Structures or constructing or leasing new Eligible Structures, SWBT will take into account future demand based upon its knowledge of Collocator demand for Collocation.
- 4.11 SWBT may retain a limited amount of floor space for SWBT's own specific future uses for a time period on terms no more favorable to SWBT for like equipment than those that apply to other telecommunications carriers, including Collocator, seeking to reserve Collocation space for their own future use. Except for space needed for switching equipment "turnaround" (e.g., the installation of new switching equipment to replace then-existing switching equipment), if any, and/or otherwise permitted or directed by applicable rule or order, SWBT will relinquish any space held for future use before denying a request for Virtual Collocation on grounds of space limitations, unless SWBT proves to the Commission that Virtual Collocation at that point is not technically feasible, including that space does not exist. In any such event, SWBT and Collocator will attempt to reach a mutually agreeable alternative method of interconnection.
- 4.12 SWBT shall, upon space exhaustion and reasonable request by Collocator, remove obsolete unused equipment from their premises if necessary to make space available for collocation.
- 4.13 SWBT may impose reasonable restrictions on its provision of additional unused space available for Collocation (so-called "warehousing") as described in paragraph 586 of the First Interconnection Order; provided, however, that SWBT shall not set a maximum space limitation on Collocator unless SWBT proves to the Commission that space constraints make such restrictions necessary.

5.0 DENIAL OF COLLOCATION EQUIPMENT

SWBT shall permit the collocation of any type of equipment necessary ("used or useful") for interconnection or access to unbundled network elements. SWBT may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that SWBT applies to its own equipment. SWBT may not object to the collocation of equipment on the ground that the equipment fails to comply with any requirement contained in TP 76200MP other than those included in Level One standards. If SWBT denies collocation of Collocator equipment, citing non-compliance to one or more TP 76200MP Level One requirements, SWBT must provide to the Collocator within five business days of the denial a list of all network

equipment that SWBT has placed within the network area(s) of the premises in question since January 1, 1998, together with an affidavit attesting that all of that equipment meets or exceeds TP 76200MP Level One requirements.

5.2 SWBT is not required to permit collocation of equipment that is not necessary for either access to UNEs or for interconnection with SWBT, nor such as equipment used exclusively for switching or for enhanced services. Nothing in this Agreement requires SWBT to permit collocation of equipment used solely for switching or solely to provide enhanced services; provided, however, that SWBT may not place any limitations on the ability of Collocator to use all the features, functions, and capabilities of equipment collocated, including, but not limited to, switching and routing features and functions and enhanced services functionalities.

6.0 DEDICATED COLLOCATION SPACE CHARGES

- 6.1 For each Eligible Structure in which Collocator desires to physically collocate equipment, Collocator must submit a Physical Collocation Application with the applicable Engineering Design Charge and/or application fee. A copy of the Physical Collocation Application may be obtained from your Collocation Services account manager. The Physical Collocation Application must also be used for each subsequent request to place equipment in an Eligible Structure.
- 6.2 SWBT will contract for and perform the construction and preparation activities underlying the Preparation Charge, including, any Custom Work charges, using same or consistent practices that are used by SWBT for other construction and preparation work performed in the Eligible Structure. Applicable recurring charges will be included in the price quote.
- 6.3 Recurring charges. Collocator shall pay to SWBT a per month for use of the Dedicated Collocation Space. The recurring monthly charges for each Dedicated Collocation Space shall stay fixed for the term of this agreement and may be modified upon renegotiation of the Interconnection Agreement
- 6.4 Collocator shall pay its proportionate share of any reasonable security arrangements SWBT employs to protect SWBT's equipment and ensure network reliability as outlined in section 3.5.
- 6.5 Payment of Preparation Charge. Prior to any obligation on SWBT to start any preparation of the Dedicated collocation space, Collocator shall pay SWBT fifty percent (50%) of the Preparation Charge and eighty-five percent (85%) of any custom work charge required to create or vacate any entrance facility for the Collocator ("Custom Work"). Collocator also has the option of submitting a surety bond to cover these charges, in lieu of a check. The remainder of the Preparation Charge and any Custom Work charge are due upon completion and prior to occupancy by the Collocator.

- 6.6 Occupancy Conditioned on Payment. SWBT shall not permit Collocator to have access to the dedicated collocation space for any purpose other than inspection during construction of Collocator's dedicated physical collocation space until SWBT is in receipt of complete payment of the Preparation Charge and any Custom Work charges.
- 6.7 **Breach Prior to Commencement Date.** In the event that the Collocator materially breaches this Agreement by purporting to terminate this Agreement after SWBT has begun preparation of the dedicated collocation space but before SWBT has been paid the entire amounts due under this Article, then in addition to any other remedies that SWBT might have, the Collocator shall be liable in the amount equal to the non-recoverable costs less estimated net salvage. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs.
- 6.8 Late Payment Charge. In the event that any charge is not paid when due, the unpaid amounts shall bear interest in accordance with the terms and conditions set forth in SWBT's intrastate tariff late payment provision(s) applicable to access services for the State in which the dedicated collocation space is located, or the highest rate permitted by law, whichever is lower, from the due date until paid.
- 6.9 Charges will begin to accrue on the Effective Billing Date. The Effective Billing Date is the date SWBT made the Dedicated Collocation Space available to Collocator.
- 6.10 **Billing.** Billing shall occur on or about the 25th day of each month, with payment due thirty (30) days from the bill date. SWBT may change its billing date practices upon thirty (30) days notice to the Collocator.
- 6.11 Charges for interconnection shall be as set forth in any interconnection agreement between SWBT and Collocator and any applicable tariffs.

7.0 USE OF DEDICATED COLLOCATION SPACE

Nature of Use – The dedicated collocation space is to be used by Collocator for purposes of collocating equipment and facilities within SWBT's Eligible Structure for interconnection with SWBT's network, pursuant to 47 U.S.C. 251(c)(2), and for obtaining access to SWBT's unbundled network elements, pursuant to 47 U.S.C. 251 (c)(3). Consistent with the nature of the Eligible Structure and the environment of the dedicated collocation space, Collocator shall not use the dedicated collocation space for office, retail, or sales purposes. No signage or markings of any kind by Collocator shall be permitted on the eligible structure or on the grounds surrounding the Building.

- 7.2 Collocator shall not have access to SWBT's Main Distribution Frame or Intermediate Distribution Frame, DSXs, DCS, or any other SWBT equipment or facilities not specifically designated by SWBT for Collocator access.
- 7.3 **Fiber Entrances** Collocator shall use a single mode dielectric fiber optic cable as a transmission medium to the dedicated collocation space. Collocator shall be permitted no more than two (2) entrance routes into the Building, if available.
- 7.4 **Demarcation Point** SWBT shall designate the point(s) of termination within the eligible structure as the point(s) of physical demarcation between Collocator's network and SWBT's network, with each being responsible for maintenance and other ownership obligations and responsibilities on its side of that demarcation point.
- 7.5 Administrative Uses Collocator may use the dedicated collocation space for placement of equipment and facilities only. Collocator's employees, agents and contractors shall be permitted access to the dedicated collocation space at all reasonable times, provided that Collocator's employees, agents and contractors comply with SWBT's policies and practices pertaining to fire, safety and security. The Collocator agrees to comply promptly with all laws, ordinances and regulations affecting the use of the dedicated collocation space. Upon the expiration of the Agreement, Collocator shall surrender the dedicated collocation space to SWBT, in the same condition as when first occupied by Collocator, ordinary wear and tear excepted.
- 7.6 Threat to Network or Facilities Regarding safety and network security, Collocator equipment or operating practices representing a significant demonstrable technical threat to SWBT's personnel, network or facilities, including the Eligible Structure, or those of others are strictly prohibited.
- 7.7 Interference or Impairment Notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in the dedicated collocation space shall not interfere with or impair service over any facilities of SWBT or the facilities of any other person or entity located in the Building; create hazards for or cause damage to those facilities, the dedicated collocation space, or the Building; impair the privacy of any communications carried in, from, or through the Building; or create hazards or cause physical harm to any individual or the public. Any of the foregoing events would be a material breach of this Agreement.
- 7.8 **Personalty and its Removal** Subject to this Article, Collocator may place or install in or on the dedicated collocation space such fixtures and equipment as it shall deem necessary for the conduct of business. Personal property, fixtures and equipment placed by Collocator in the dedicated collocation space shall not become a part of the dedicated collocation space, even if nailed, screwed or otherwise fastened to the dedicated collocation space, but shall retain their

status as personality and may be removed by Collocator at any time. Any damage caused to the dedicated collocation space by the removal of such property shall be promptly repaired by Collocator at its expense.

- 7.9 Alterations In no case shall Collocator or any person purporting to be acting through or on behalf of Collocator make any rearrangement, modification, improvement, addition, repair, or other alteration to the dedicated collocation space or the Eligible Structure without the advance written permission and direction of SWBT. SWBT shall consider a modification, improvement, addition, repair, or other alteration requested by Collocator, provided that SWBT shall have the right to reject or modify any such request. The cost of any such construction shall be paid by Collocator in accordance with SWBT's then-standard custom work order process.
- 7.10 Minimum Standards This Agreement and the physical collocation provided hereunder is made available subject to and in accordance with the SBC Technical Publication 76200MP Level 1 requirements (ii) SWBT's Interconnector's Collocation Service Handbook for Physical Collocation dated June 1, 1999, as may be amended from time to time; (iii) SBC Technical Publication 76300MP, Installation Guide, followed in installing network equipment and facilities within SWBT central offices, as may be amended from time to time; (iv) SWBT's Emergency Operating Procedures, as may be amended from time to time; and (v) any statutory and/or regulatory requirements in effect at the execution of this Agreement or that subsequently become effective and then when effective. Collocator shall strictly observe and abide by each.
- 7.11 Revisions Any revision to SWBT's Interconnector's Collocation Service Handbook, its Technical Publication 76300MP, any other Technical Publication specified within the Interconnector's Collocation Services Handbook, or its Emergency Operating Procedures shall become effective and thereafter applicable under this Agreement thirty (30) days after such revision is released by SWBT; provided, however, that any revision made to address situations potentially harmful to SWBT's network or the dedicated collocation space or to comply with statutory and/or regulatory requirements shall become effective immediately.
- 7.12 Compliance Certification Collocator warrants and represents that all equipment or facilities placed in an Eligible Structure shall be in compliance with SBC TP76200MP Level 1 requirements.
- 7.13 Power Unless otherwise expressly agreed in writing, SWBT will provide for all AC and DC power requirements in the eligible structure. Collocator is not permitted to, and will not, place any AC or DC power-generating or power-storing devices (including, for example, rectifiers, battery plants, AC or DC generators) in the Eligible Structure. Power will support Collocator Telecom Equipment at the specified DC and AC voltages. At a minimum, the Power and SWBT's associated performance, availability, restoration, and other operational characteristics shall be at parity with that provided to SWBT's substantially similar telecommunications equipment unless otherwise mutually agreed in writing. All necessary Power will be supplied on a timely basis. A physical collocation space will be considered timely delivered only if it is fully operational, including power, at the time it is turned over to

Collocator. The use of at least one Collocation Interconnect Power Panel (CIPP) will be required with each application. This panel will provide a location for DC power terminations in all physical collocation arrangements. This panel will reside within one of Collocator's equipment bays within their designated space.

8.0 RESPONSIBILITIES OF COLLOCATOR

- 8.1 Contact Number Collocator is responsible for providing to SWBT personnel a contact number for Collocator's technical personnel who are readily accessible 24 hours a day, 7 days a week.
- 8.2 **Trouble Status Reports** Collocator is responsible for providing trouble report status when requested by SWBT.
- 8.3 **Optical Fiber Extension** Collocator is responsible for bringing its fiber optic cable to the wire center entrance manhole(s) designated by SWBT, and for leaving sufficient cable length in order for SWBT to fully extend the Collocator-provided cable through the cable vault to the dedicated collocation space.
- 8.4 Regeneration Regeneration of either DS1 or DS3 signal levels may be provided by Collocator, or SWBT under its then-standard custom work order process, including payment requirements prior to the installation of the regeneration equipment.
- 8.5 Removal Collocator is responsible for removing any equipment, property or other items that it brings into the dedicated collocation space or any other part of the Building. If Collocator fails to remove any equipment, property, or other items from the dedicated collocation space within thirty (30) days after discontinuance of use, SWBT may perform the removal and shall charge Collocator for any materials used in any such removal, and the time spent on such removal at the then-applicable hourly rate for custom work. Further, in addition to the other provisions herein, Collocator shall indemnify and hold SWBT harmless from any and all claims, expenses, fees, or other costs associated with any such removal by SWBT.
- 8.6 Collocator's Equipment and Facilities Collocator is solely responsible for the design, engineering, testing, performance, and maintenance of the equipment and facilities placed by Collocator in the dedicated collocation space. Collocator will be responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the dedicated collocation space:
 - (a) Its fiber optic cable(s);
 - (b) Its equipment;
 - (c) Optional point of termination cross connects in its dedicated collocation space or the optional POT Frame/cabinet located in the collocation common area except if

on SWBT's equipment.

- (d) Collocator requested dedicated point of termination frame maintenance, including replacement of fuses and circuit breaker restoration, to the extent that such fuses and circuit breakers are within Collocator's dedicated collocation space or in the optional POT frame located in the collocation common area if and as required; and
- (e) The connection cable and associated equipment which may be required within Collocator's dedicated collocation space or in the optional POT frame/cabinet located in the collocation common area to the point(s) of termination of that cable within Collocator's dedicated space.
- (f) Any power cables required beyond the SWBT provided Collocation Interconnection Power Panel (CIPP) to Collocator's equipment. SWBT must always engineer, furnish and install the Collocation Interconnect Power Panel (CIPP) within Collocator-provided equipment bay, the associated power cables to the CIPP from the SWBT provided power distribution source and terminate and test the power cables. The CIPP will be placed within Collocator-provided equipment bay in a location within the bay as designated by Collocator.

SWBT NEITHER ACCEPTS NOR ASSUMES ANY RESPONSIBILITY WHATSOEVER IN ANY OF THESE AREAS.

- 8.7 **Verbal Notifications Required** Collocator is responsible for immediate verbal notification to SWBT of significant outages or operations problems which could impact or degrade SWBT's network, switches, or services, and for providing an estimated clearing time for restoral. In addition, written notification must be provided within twenty-four (24) hours.
- 8.8 Service Coordination Collocator is responsible for coordinating with SWBT to ensure that services are installed in accordance with the service request.
- 8.9 **Testing** Collocator is responsible for testing, to identify and clear a trouble when the trouble has been isolated to a Collocator-provided facility or piece of equipment. If SWBT testing is also required, it will be provided at charges specified in SWBT's F.C.C. No. 73, Section 13.

9.0 VIRTUAL COLLOCATION

9.1 The description of Virtual Collocation Interconnection is contained in SWBT's Virtual Collocation tariffs (i.e., SWBT's Tariff F.C.C. No. 73).

10.0 CASUALTY LOSS

- 10.1 **Damage to dedicated collocation space** If the dedicated collocation space are damaged by fire or other casualty, and
 - (i) The dedicated collocation space are not rendered untenantable in whole or in part, SWBT shall repair the same at its expense (as hereafter limited) and the rent shall not be abated, or
 - (ii) The dedicated collocation space are rendered untenantable in whole or in part and such damage or destruction can be repaired within ninety (90) days, SWBT has the option to repair the dedicated collocation space at its expense (as hereafter limited) and rent shall be proportionately abated while Collocator was deprived of the use. If the dedicated collocation space cannot be repaired within ninety (90) days, or SWBT opts not to rebuild, then this Agreement shall (upon notice to Collocator within thirty (30) days following such occurrence) terminate as of the date of such damage.

Any obligation on the part of SWBT to repair the dedicated collocation space shall be limited to repairing, restoring and rebuilding the dedicated collocation space as originally prepared for Collocator and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by Collocator or by SWBT on request of Collocator; or any fixture or other equipment installed in the dedicated collocation space by Collocator or by SWBT on request of Collocator.

10.2 **Damage to Building** – In the event that the eligible structure shall be so damaged by fire or other casualty that closing, demolition or substantial alteration or reconstruction thereof shall, in SWBT's opinion, be advisable, then, notwithstanding that the dedicated collocation space may be unaffected thereby, SWBT, at its option, may terminate this Agreement by giving Collocator ten (10) days prior written notice within thirty (30) days following the date of such occurrence, if at all possible.

11.0 RE-ENTRY

If Collocator shall default in performance of any agreement herein, and the default shall continue for thirty (30) days after receipt of written notice, or if Collocator is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess the dedicated collocation space, expel Collocator and any claiming under Collocator, remove Collocator's property, forcibly if necessary, and thereupon this Agreement shall terminate, without prejudice to any other remedies SWBT might have. SWBT may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service by Collocator at any time thereafter.

12.0 LIMITATION OF LIABILITY

- 12.1 Limitation With respect to any claim or suit for damages arising in connection with the mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service hereunder, the liability of SWBT, if any, shall not exceed an amount equivalent to the proportionate monthly charge to Collocator for the period during which such mistake, omission, interruption, delay, error, or defect in transmission or service occurs and continues. However, any such mistakes, omissions, interruptions, delays, errors, or defects in transmission or service which are caused or contributed to by the negligence or willful act of Collocator or which arise in connection with the use of Collocator-provided facilities or equipment shall not result in the imposition of any liability whatsoever upon SWBT.
- 12.1.1 Neither party shall be responsible to the other for any indirect, special, consequential, lost profit, or punitive damages, whether in contract or tort.
- 12.1.2 Each party shall be indemnified and held harmless by the other against claims and damages by any third party arising from provision of the other party's services or equipment except those claims and damages directly associated with the provision of services to the other party which are governed by the provisioning party's applicable tariffs.
- 12.1.3 Neither party shall have any liability whatsoever to the customers of the other party for claims arising from the provision of the other party's service to its customers, including claims for interruption of service, quality of service or billing disputes.
- 12.1.4 The liability of either party for its willful misconduct, if any, is not limited by this Agreement. With respect to any other claim or suit, by a customer or by any others, for damages associated with the installation, provision, preemption, termination, maintenance, repair or restoration of service, SWBT's liability, if any, shall not exceed an amount equal to the proportionate monthly charge for the affected period.
- 12.1.5 SWBT shall not be liable for any act or omission of any other carrier or customer providing a portion of a service, nor shall SWBT for its own act or omission hold liable any other carrier or customer providing a portion of a service.
- 12.1.6 When Collocator is provided service under this Agreement, SWBT shall be indemnified, defended and held harmless by Collocator against any claim, loss or damage arising from the customer's use of services offered under this Agreement, involving:
 - (a) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from the customer's own communications;
 - (b) Claims for patent infringement arising from the customer's acts combining or using the service furnished by SWBT in connection with facilities or equipment furnished by the customer; or
 - (c) All other claims arising in connection with any act or omission of in the course of

APPENDIX COLLOCATION - MO
PAGE 23 OF 30
SWBTCLEC
070799

using services provided pursuant to this Agreement.

12.2 Third Parties – Collocator acknowledges and understands that SWBT may provide space in or access to the eligible structure to other persons or entities ("Others"), which may include competitors of Collocator; that such space may be close to the dedicated collocation space, possibly including space adjacent to the dedicated collocation space and/or with access to the outside of the dedicated collocation space; and that if Collocator requests a cage around its equipment, the cage dedicated collocation space is a permeable boundary that will not prevent the Others from observing or even damaging Collocator's equipment and facilities. In addition to any other applicable limitation, SWBT shall have absolutely no liability with respect to any action or omission by any other, regardless of the degree of culpability of any such other or SWBT, and regardless of whether any claimed SWBT liability arises in tort or in contract. Collocator shall save and hold SWBT harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other acting for, through, or as a result of Collocator.

13.0 INDEMNIFICATION OF SWBT

In addition to any other provision hereof, Collocator agrees to indemnify, defend and save harmless SWBT (including its officers, directors, employees, and other agents) from any and all claims, liabilities, losses, damages, fines, penalties, costs, attorney's fees or other expenses of any kind, arising in connection with Collocator's use of the dedicated collocation space, conduct of its business or any activity, in or about the dedicated collocation space, performance of any terms of this Agreement, or any act or omission of Collocator (including its officers, directors, employees, agents, contractors, servants, invitees, or licensees). Defense of any claim shall be reasonably satisfactory to SWBT.

14.0 LIMITATION OF ACTIONS; DISPUTE RESOLUTION

- 14.1 Finality of Disputes No claim arising from this Agreement shall be brought more than twenty-four (24) months from the date of occurrence which gives rise to the claim.
- 14.2 Alternative to Litigation The parties desire to resolve disputes arising in connection with this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising from or relating to this Agreement.
- 14.3 Resolution of Disputes Between Parties At the written request of a party, each party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may use other alternative dispute resolution procedures, such as mediation, to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement, exempt from discovery and production, shall not be

hish beat his how hish

admissible in the arbitration described below or in any lawsuit without the concurrence of all parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

- 14.4 **Arbitration** If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set forth in those rules. Discovery shall be controlled by the arbitrator and shall be permitted only to the extent set forth in this Section. Each party may submit in writing to the other party, and the receiving party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following:
 - (a) Interrogatories
 - (b) Demands to produce documents
 - (c) Requests for admission

Additional discovery may be permitted upon mutual agreement of the parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in _______. The arbitrator shall control the scheduling so as to process the matter expeditiously. The parties shall submit written briefs five days before the hearing. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

14.5 **Costs** – Each party shall bear its own costs of these procedures. A party seeking discovery shall reimburse the responding party the costs of production of documents (including search time and reproduction costs). The parties shall equally split the fees of the arbitration and the arbitrator.

15.0 NOTICES

Except as may be specifically permitted in this Agreement, any notice, demand, or payment required or desired to be given by one party to the other shall be in writing and shall be valid and sufficient if dispatched by registered or certified mail, return receipt requested, postage prepaid, in the United States mails, or by facsimile transmission; provided, however, that notices sent by such registered or certified mail shall be effective on the third business day after mailing and those sent by facsimile transmission shall only be effective on the date transmitted if such notice is also sent by such registered or certified mail no later than the next business day after

transmission, all addressed as follows:

If to SWBT:

Account Manager - Collocation

Four Bell Plaza, 9th Floor

311 S. Akard St.

Dallas, TX 75202-5398

Either party hereto may change its address by written notice given to the other party hereto in the manner set forth above.

16.0 COMPLIANCE WITH LAWS

Collocator and all persons acting through or on behalf of Collocator shall comply with the provisions of the Fair Labor Standards Act, the Occupational Safety and Health Act, and all other applicable federal, state, county, and local laws, ordinances, regulations and codes (including identification and procurement of required permits, certificates, approvals and inspections) in its performance hereunder. Collocator further agrees during the term of this Agreement to comply with all applicable Executive and Federal regulations as set forth in SW9368, attached as Exhibit and incorporated herein, as may be modified from time to time.

17.0 OSHA STATEMENT

Collocator, in recognition of SWBT's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SWBT with all federal, state and local laws, safety and health regulations relating to the dedicated collocation space which Collocator has assumed the duty to maintain pursuant to this Agreement, and to indemnify and hold SWBT harmless for any judgments, citations, fines, or other penalties which are assessed against SWBT as the result of Collocator's failure to comply with any of the foregoing. SWBT, in its status as an employer, shall comply with all federal, state and local laws, safety and health standards and regulations with respect to the structural and those other portions of the dedicated collocation space which SWBT has agreed to maintain pursuant hereto.

18.0 INSURANCE

18.1 Coverage Requirements – Collocator shall, at its sole cost and expense procure, maintain, pay for and keep in force the following insurance coverage and any additional insurance and/or bonds required by law and underwritten by insurance companies having a BEST Insurance rating of A+VII or better, and which is authorized to do business in the jurisdiction in which the dedicated collocation space are located. SWBT shall be named as an ADDITIONAL INSURED on general liability policy.

- (1) Comprehensive General Liability insurance including Products/Completed Operations Liability insurance including the Broad Form Comprehensive General Liability endorsement (or its equivalent(s)) with a Combined Single limit for Bodily Injury and Property Damage of \$1,000,000. Said coverage shall include the contractual, independent contractors products/completed operations, broad form property, personal injury and fire legal liability.
- If use of an automobile is required or if Collocator is provided or otherwise allowed parking space by SWBT in connection with this Agreement, automobile liability insurance with minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combine. Coverage shall extend to all owned, hired and non-owned automobiles. Collocator hereby waives any rights of recovery against SWBT for damage to Collocator's vehicles while on the grounds of the eligible structure and Collocator will hold SWBT harmless and indemnify it with respect to any such damage or damage to vehicles of Collocator's employees, contractors, invitees, licensees or agents.
- (3) Workers' Compensation insurance with benefits afforded in accordance with the laws of the state in which the space is to be provided.
- (4) Employer's Liability insurance with minimum limits of \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease per employee and \$500,000 for bodily injury by disease policy aggregate.
- (5) Umbrella/Excess liability coverage in an amount of \$5 million excess of coverage specified above.
- All Risk Property coverage on a full replacement cost basis insuring all of (6) Collocator's personal property situated on or within the eligible structure or the dedicated collocation space. Collocator releases SWBT from and waives any and all right of recovery, claim, action or cause of action against SWBT, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to Collocator or located on or in the space at the instance of Collocator by reason of fire or water or the elements or any other risks would customarily be included in a standard all risk casualty insurance policy covering such property, regardless of cause or origin, including negligence of SWBT, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on Collocator's fixtures and other personal property shall contain a waiver of subrogation against SWBT, and any rights of Collocator against SWBT for damage to Collocator's fixtures or personal property are hereby waived.

Collocator may also elect to purchase business interruption and contingent business interruption insurance, knowing that SWBT has no liability for loss of profit or revenues should an interruption of service occur.

- 18.2 Coverage Increases The limits set forth in Section 18.1 may be increased by SWBT from time to time during the term of occupancy to at least such minimum limits as shall then be customary in respect of comparable situations within the existing SWBT buildings.
- 18.3 **Primary Coverage** All policies purchased by Collocator shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by SWBT.
- 18.4 Effective Date All insurance must be in effect on or before occupancy date and shall remain in force as long as any of Collocator's facilities or equipment remains within the dedicated collocation space or the Building. If Collocator fails to maintain the coverage, SWBT may pay the premiums thereon and, if so, shall be reimbursed by Collocator.
- 18.5 Supporting Documentation Collocator shall submit certificates of insurance and copies of policies reflecting the coverages specified above prior to the commencement of the work called for in this Agreement. Collocator shall arrange for SWBT to receive thirty (30) days advance written notice from Collocator's insurance company (ies) of cancellation, non-renewal or substantial alteration of its terms.
- 18.6 Carrier Recommendations Collocator must also conform to the recommendation(s) made by SWBT's Property Insurance Company which Collocator has already agreed to or to such recommendations as it shall hereafter agree to.
- 18.7 **Material Breach** Failure to comply with the provisions of this section will be deemed a material violation of this Agreement.

19.0 SWBT's RIGHT OF ACCESS

SWBT, its agents, employees, and other SWBT-authorized persons shall have the right to enter the collocation area of the SWBT dedicated collocation space at any reasonable time to examine its condition, make repairs required to be made by SWBT hereunder, and for any other purpose deemed reasonable by SWBT. SWBT may access the collocation area dedicated collocation space for purpose of averting any threat of harm imposed by Collocator or its equipment or facilities upon the operation of SWBT equipment, facilities and/or personnel located outside of the dedicated collocation space. If routine inspections are required, they shall be conducted at a mutually agreeable time.

20.0 MISCELLANEOUS

20.1	Exhibits – The following	Exhibits are attached hereto	and made part hereof

Exhibit	
Exhibit	
Exhibit	
Exhibit	

- 20.2 Variations In the event of variation or discrepancy between any duplicate originals hereof, including exhibits, the original Agreement held by SWBT shall control.
- 20.3 Governing Law This Agreement shall be governed by the laws of the State in which the dedicated collocation space is located, without regard to the choice of law principles thereof.
- 20.4 **Joint and Several** If Collocator constitutes more than one person, partnership, corporation, or other legal entities, the obligation of all such entities under this Agreement is joint and several.
- 20.5 Future Negotiations SWBT may refuse requests for space in an Eligible structure if Collocator is in material breach of this Agreement, including having any past due charges hereunder. In any and each such event, Collocator hereby releases and holds SWBT harmless from any duty to negotiate with Collocator or any of its affiliates for any additional space or physical collocation.
- 20.6 Severability With the exception of the requirements, obligations, and rights set forth in this Appendix, if any of the provisions herein are otherwise deemed invalid, such invalidity shall not invalidate the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid provision(s), and the rights and obligations of SWBT and Collocator shall be construed accordingly.
- 20.7 **Paragraph Headings and Article Numbers** The headings of the articles and paragraphs herein are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.
- 20.8 Entire Agreement This Agreement with the attached schedules and exhibits, and referenced documentation and materials attached hereto set forth the entire understanding of the parties and supersedes all prior agreements, arrangements and understandings relating to this subject matter and may not be changed except in writing by the parties; provided, however, that this provision shall not affect current or pending tariffs, under investigation or otherwise, including any charges due thereunder. No representation, promise, inducement or statement of

intention has been made by either party which is not embodied herein, and there are no other oral or written understandings or agreements between the parties relating to the subject matter hereof except as may be referenced herein.

- 20.9 No Third Party Beneficiaries Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.
- 20.10 Construction This Agreement shall be interpreted and governed without regard to which party drafted this Agreement.
- 20.11 Multiple Originals This Agreement may be executed in multiple copies, each of which shall be deemed an original.

20.12 Wavier of Obligations

- 20.12.1 Whenever this Agreement requires the consent of a party, any request for such consent shall be in writing.
- Neither party shall be deemed to have waived or impaired any right, authority, or option reserved by this Agreement (including the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach hereof to be a default and to terminate this Agreement prior to the expiration of its term), by virtue of any custom or practice of the parties at variance with the terms hereof or any failure, refusal or neglect to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder, including any rule or procedure, or any waiver, forbearance, delay, failure or omission by SWBT to exercise any right, power or option, whether of the same, similar or different nature, with respect to one or more other collocators.
- 20.13 Rights of Review with Remedies The parties acknowledge and agree that the rates, terms, and conditions set forth in this Amendment, including among others those above relating to cageless collocation, are subject to any legal or equitable rights of review and remedies (including, but not limited to, the need to renegotiate this Amendment if any agency reconsideration and/or court review results in changes in FCC 99-48).
- 20.14 **Rights Cumulative** The rights of a party hereunder are cumulative and no exercise or enforcement by such party of any right or remedy hereunder shall preclude the exercise or enforcement of any other right or remedy hereunder or to which such party is entitled to enforce.
- 20.15 **Binding Effect** This Agreement is binding upon the parties hereto, their respective executors, administrators, heirs, assigns and successors in interest. All obligations by either party which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature.

- 20.16 Impossibility of Performance Neither party shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from: (a) compliance with any law, ruling, order, regulation, requirement or instruction of any federal, state or municipal government or any department or agency thereof or court of competent jurisdiction; (b) acts of God; (c) acts of omissions of the other party; (d) fires, strikes, labor difficulties, embargoes, war, insurrection or riot; or any other intervening act beyond the reasonable control of the party claiming such a delay. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable. In any such event, Collocator's authorized agents and contractors will comply with the Emergency Operating Procedures established by SWBT.
- 20.17 Survival The terms, provisions, representations, and warranties contained in this Agreement that by their nature and/or context are intended to survive the performance thereof by either or both parties hereunder shall so survive the completion of performances and termination of this Agreement, including the making of any and all payments due hereunder.
- 20.18 Successors Bound Without limiting Article XI hereof, the conditions and agreements contained herein shall bind and inure to the benefit of SWBT, Collocator and their respective successors and, except as otherwise provided herein, assigns.
- 20.19 Conflict of Interest Collocator represents that no employee or agent of SWBT has been or will be employed, retained, paid a fee, or otherwise has received or will receive any personal compensation or consideration from Collocator, or any of Collocator's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.
- 20.20 Non-Exclusive Remedies No remedy herein conferred upon is intended to be exclusive of any other remedy in equity, provided by law, or otherwise, but each shall be in addition to every other such remedy.
- 20.21 Assignment Collocator shall not assign or otherwise transfer this Agreement, neither in whole nor in part, or permit the use of any part of the dedicated collocation space by any other person or entity, without the prior written consent of SWBT which shall not be unreasonable withheld. Any purported assignment or transfer made without such consent shall be voidable at the option of SWBT including subleased or shared caged physical collocation arrangements.

21.0 APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

This appendix, and every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement or any other appendices or attachments to this Agreement which are legitimately related to such interconnection, service or network element; and all such rates, terms and conditions are incorporated by reference herein and as part of every interconnection, service and network element provided hereunder. Without

APPENDIX COLLOCATION - MO
PAGE 32 OF 30
SWBTCLEC
070799

limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation and construction, notice of changes, general responsibilities of the Parties, effective date, term, termination, disclaimer of representations and warranties, changes in end user local exchange service provider selection, severability, intellectual property, indemnification, limitation of liability, Force Majeure, confidentiality, audits, disputed amounts, dispute resolution, intervening law and miscellaneous.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed and delivered this Agreement as of the day and year first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT.

SOUTHWESTERN BELL TELEPHONE COMPANY

Ву: _				
Interco	onnector:	Colloc	ator	
Ву: _				
Title:				